

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9495 of 2016

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1. Rakesh Kumar Son of late Sharda Nand Lal aged about 51 Years Nand Bhawan
Gandhi Path, Mithapur, Patna-800001.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary Department of Industry, Patna Bihar.
3. The Director Handloom and Sericulture, Department of Industries , Bihar, Patna.
4. The Additional Director of Industries (Tech) Department of Industries , Bihar, Patna.
5. The Senior Account (Handloom & Silk), Handloom & Sericulture ,Directorate, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Dayal
For the Respondent/s	:	Mr. Nivedita Nirvikar- GA10
		Mr. Manoj Kumar AC to GA-10

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
CAV JUDGMENT
Date: 16-09-2016

Writ application has been filed by the petitioner, who is a Clerk in the Handloom and Sericulture, Directorate of the State of Bihar. One relief is for a direction upon the respondent-authorities to pay him salary from March, 2016, which has been stopped and the second relief is for quashing of Annexure – 7, dated 18.02.2016, by virtue of which the benefit of 1st A.C.P. granted to the petitioner, has been withdrawn and even a order for recovery was passed.

2. In the counter affidavit, filed on behalf of the Respondent Nos. 1 to 5, the respondents have categorically stated that the petitioner and other similarly situated employees have been paid their salary up till June, 2016 and they would continue to get

their salary on a monthly basis on the pay-scale, which they are entitled to in accordance with law. This position is established by the petitioner's communication made to the Director, contained in Annexure-A to the counter affidavit.

3. Coming to the issue of the cancellation of A.C.P. and question of recovery, the Court is informed that the petitioner and others similarly situated employees filed a writ application, bearing C. W. J. C. No. 11996 of 2014, which was the case of Smt. Manju Devi and others Versus The State of Bihar & others. In the said writ application, they had jointly assailed the earlier order, dated 11.06.2014, which is Annexure – 4 to the writ application. The Hon'ble Court vide order, dated 19.01.2016, contained in Annexure-6 to the writ application, quashed the order of recovery, but did not interfere with the order, dated 11.06.2014, by virtue of which the benefit granted under the A.C.P. Scheme was withdrawn, because of non-passing of the departmental examination. The department on further scrutiny discovered that not all employees, who had similarly derived benefit of A.C.P., without passing of departmental examination, were included in the earlier notification, therefore, another order, contained in Annexure-7, dated 18.02.2016 was passed in relation to four employees, which includes the present petitioner. The decision, contained in Annexure-7, is no different from Annexure – 4, whose validity was upheld by the High Court in its decision, contained in Annexure-6, except the aspect of recovery.



4. The stand of the respondent is that since in an identical matter, the Court had quashed the order of recovery, applying the principle of parity, the recovery part has been stayed even in relation to the petitioner and the department has decided to appeal against Annexure – 6. No recovery, in fact, has been made from the petitioner's salary, so far. If the benefit of the A.C.P. is taken away, the petitioner would naturally fall in the pay-scale of Rs. 4000-6000/- and he has been paid his salary in the same said pay-scale. This fixing of scale was necessitated in the above background so the Director did the needful by issuing Annexure – C to the counter affidavit which can be perused.

5. The Court is also informed by the learned counsel, representing the respondents that taking cue from the observation of the Hon'ble High Court, contained in Annexure-6, some of the employees, including the petitioner, filed a representation in light of the new A.C.P. Rules in place. That too has been considered and rejected vide order, dated 18.07.2016, which is Annexure – J to the counter affidavit.

6. In the totality of the facts, therefore, the grievance of the petitioner with regard to his salary is over. The question of pay-scale and entitlement of A.C.P. has already been negated in an earlier adjudication as per Annexure – 6. Part of that order is under appeal, as informed, but that is limited to recovery. A fresh decision has further been taken on the entitlement of this petitioner in light of

2015 Rules, which too has been considered and rejected. So long as that order stands and in the background of the earlier decision of the Court, refusing to interfere with the decision of the respondents to withdraw the A.C.P., remains, the other relief prayed for for A.C.P. by the petitioner, in the writ application, cannot be granted to him.

The writ application, therefore, is dismissed, being devoid of merit.

(Ajay Kumar Tripathi, J)

SKM/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	16.09.2016
Transmission Date	